DOCUMENT RESUME

ED 190 321 RC 012 171

TITLE Questions and Answers on Treaty Rights.
INSTITUTION National Coalition to Support Indian Treaties, Seattle, Wash.: Point No Point Treaty Council, Kingston, Wash.
PUB DATE Jul 80
NOTE 17p.: For a related document, see ED 173 020.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS American Indian Reservations: *American Indians: Citizenship: *Federal Indian Relationship: Government Role: Natural Resources: Social Services: *Treaties: *Tribal Sovereignty: Tribes: *Trust Responsibility (Government): *United States History

ABSTRACT

Between 1779 and 1864 the United States signed over 400 legal and binding agreements with Indian governments. Treaties signed between 1779 and 1810 sought Indian alliances against England, France, and Spain (all of whom also signed treaties with the Indians at one time or another). Treaties signed from 1817 to 1846 were treaties of removal, and those of 1846-1864 were reservation treaties. In the treaties, upheld as legal by the U.S. Constitution and courts, the U.S. government promised the Indians health care, education, some monies, and protection from attack on their lands and rights, yet these promises have not often been kept. As tribal strength has increased so has the Indian conviction that to thrive as a people they must retain the land base guaranteed to them and must control its use. They must have authority to levy taxes on reservation lands to obtain the money every government needs to provide services. Strong and economically independent tribal organizations can provide adequate economic opportunities and social services for their people. These and other topics related to Indian treaty rights are explored in a series of 14 questions and answers. (SB)

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Questions and Answers on Treaty Rights.

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POINT NO POINT TREATY COUNCIL

July 1980

RC012171

About the Coalition

The National Coalition to Support Indian Treaties is composed of local and national non-Indian organizations and individuals who have voiced support for the keeping of claims and treaties signed by the United States and Native Americans. The purpose of the organization is to educate people to understand Native American struggles for self-determination and the moral, legal and political responsibility bequeathed to the non-native citizenry by the treaties. The coalition is guided in its efforts by its Board of Directors.

The Speakers Bureau — includes attorneys, scientists, clergy, and Native Americans who address civic organizations, public forums, church groups, schools and the media.

Internal Education — researched information, workshops, and teach-ins for members.

Legislative Response Network — an opportunity for individuals across the nation to join together in a grass-roots, citizen's network to express views and support for Indian treaty rights.

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STAFF: Pamela Wojcik

Point No Point Treaty Council

Point No Point Treaty Council is an Indian fisheries management cooperative formed shortly after the "Boldt decision" in 1974. The Skokomish tribe and Port Gamble and Lower Elwha Klallams joined forces to more effectively and efficiently meet their fisheries management responsibilities and protect Indian fishing rights.

The Treaty Council maintains programs in fisheries management, enhancement, enforcement and public education. The central office is located at the Port Gamble Klallam Indian reservation near Kingston, Washington. The staff members also work in field offices at the Skokomish and Lower Elwha reservations.

Exactly what is a treaty?

A treaty is an agreement, binding and legal, between two or more sovereign nations. When nations make treaties with each other, they also recognize that each is sovereign; that is, that each has legitimate political power of its own. All treaties made by the U.S. government and another sovereign nation must be ratified by the United States Senate.

When the first European explorers arrived in North America, there were at least a million Indians here, organized into more than 600 groups. Many of these groups belonged to highly structured governments within an intricate, far-reaching trading economy.

The agreements signed with Indian tribes are treaties because the U.S. recognized that tribes were sovereign nations with legitimate sovereign powers of their own.

What legal status do these agreements have?

The U.S. Constitution upholds treaties as "the supreme law of the land" in Artive IV, Section 2. U.S. courts have repeatedly recognized Indian nations as sovereign. Consequently treaties between Indian nations and the U.S. have the dignity as well as the full force and effect of any other international agreement.

> Article VI- U.S. Constitution:
>
> "All treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution of laws of any state to the contrary notwithstanding."

Was the U.S. the only country to sign treaties with Indians?

No. England, France and Spain also dealt with Indian governments as equals. They signed treaties to regulate and formalize relationships with the tribes. Later, the U.S. signed more than 400 treaties with Indian governments.

What kinds of treaties have we signed with Indians in this country?

In the early treaties (1779-1810), the new United States was weak economically and militarily. The country sought Indian assurances of peace. Often these treaties asked that Indians join in military alliances against the British, French and Spanish. Indians negotiated these treaties from a position of strength since they could choose to ally themselves with the U.S. or with the Europeans.

From 1817 to 1846, the U.S. signed many "treaties of removal." The primary goal was to remove Indians from land desired by whites. These treaties reflect the declining power of the Indians as the Europeans, potential allies against the U.S., withdrew their claims from North America. The emigration of the Cherokees (known as "Trail of Tears") and other Indians from the Southeast and from the Great Lakes to lands west of the Mississippi in Arkansas, Kansas and Oklahoma occured under these treaties.

Finally, the U.S. signed "reservation treaties" (1846-1864) or "treaties of peace and friendship." As the Southwest, the Pacific coast and Northwestern territories were claimed by the U.S., it became impossible to force Indians to move any farther west. War was proven to be a nonviable solution by the costliness of Indian wars. Officials estimated that those wars had cost the federal government more than one million dollars for each dead Indian.

As white settlers moved further west it became necessary for the United States to obtain legal title to the land by signing treaties. In these new treaties, like the "treaties of removal," the Indians ceded vast amounts of land to the United States while reserving certain homelands for exclusive tribal use and occupancy.

In return for land and altering their livelihoods, Indians received promises of money, goods, and certain services, such as health care and education. The U.S. government is still providing these treaty-promised services in some cases today.

What promises did the United States make in the treaties?

In return for the vast Indian holdings and resources, the United States made certain promises:

1. Protection for Indians from attacks upon their lands and rights. This protection included legal assistance.
2. Health care.
3. Education.
4. Some monies.

It is important to remember that these promises were made in honor. Also, they were, and still are, legally binding upon the U.S. by the 6th Article of the U.S. Constitution.

What basis is there for preserving treaties?

1. There is a legal basis.

Treaties are international agreements between two sovereign nations. Treaties do not lose their potency with age. The federal courts have repeatedly upheld the validity of Indian treaties. To change any contract, our legal system holds that both parties must be in agreement. This is also true in international law. Indian treaties are regarded as legally binding contracts between two sovereign entities.

2. There is a just basis.

When tribes deeded to the United States their title to the land, they reserved certain rights and received promises of certain services and protections. The United States still enjoys the property and other rights gained from the tribes by the treaties. It is only just that the U.S. honor its commitments to the Indian nations who gave so much.

Don't reservations keep Indians from becoming assimilated and self-supporting citizens?

A great many Indians do not want to become assimilated. They believe they have the right to remain Indians, just as non-Indians have the right to choose their own lifestyle. This choice does not condemn them to a life of poverty, however. Strong tribal governments can provide economic opportunity for their people. Many tribes today assert their right to provide for their own people. This task is made more difficult, however, when states or the federal government make laws which usurp this tribal responsibility and independence.

The Mohawk Tribe and the Six Nation Confederacy, which have continued their traditional form of government, to this day maintains that their traditional lands were not disposed of legitimately because consent was not given by the Six Nations Grand Council. In 1974, the Mohawks occupied land within their original territory. After much dispute and negotiation with New York State, the tribe secured lands

on which they have reestablished a traditional Mohawk community known as Ganienkeh. Ganienkeh allows the Mohawk people to live in a manner that is most satisfying to them. The traditional ways of religion, medicine and education are practiced. Self-sufficiency and self-reliance enable the community to develop as Mohawks.

Other tribes are also planning and working for the economic and social well-being of their people. Tribes are contracting with the federal government to deliver services once provided through the Bureau of Indian Affairs. They are developing tribal enterprises that provide employment opportunities for tribal memebers and income for tribal programs.

The Skokomish Indian Tribal Enterprises (S.I.T.E.) is somewhat typical of rising tribal enterprises, especially in the Pacific Northwest. It consists of the tribal smoke and gift shops and a fish processing plant. The processing plant prepares fish for canning and sales on the open market. It also has facilities for smoking. Although the plant is small, S.I.T.E. has the potential of employing as many as fifteen people and creating as much as $100,000 for tribal use. This money is used to maintain and expand the plant as well as to aid tribal social programs. In this way, reservation life can be sustained both economically and culturally.

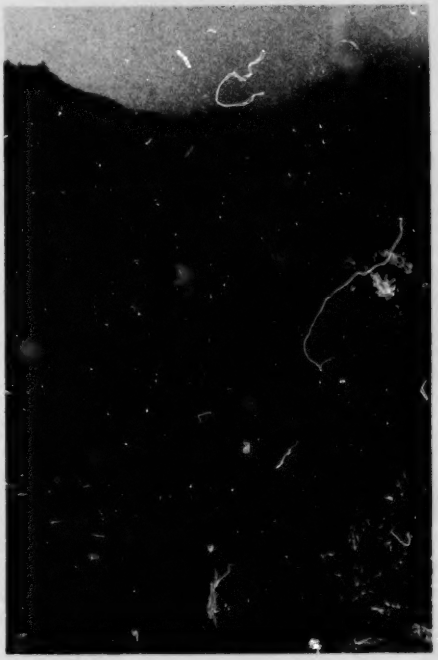
Don't non-Indians use land more wisely than Indians?

Whites who developed America believed that to properly use land it should be cut over, divided, sold, plowed and mined to increase the material wealth of the owners. This view is very different from traditional Indian philosophy. The Indian's inability to understand the non-Indian's hunger for land was matched by the white man's inability to comprehend the Indian's reverence for land.

Many people have come to realize that exploitation of land has created the hazard of total destruction of our natural habitat and eventual decay of our quality of life. Careful and thoughtful resource and land development is now seen to be a more proper use of land than widescale exploitation. To the tribes, reservation lands are their last homelands. Tribes intend to protect these homelands for the benefit of both those living today and those yet unborn. To the tribes, therefore, exploitation of their land may not be its most responsible use.

Tribal governments can and do regulate land-use practices. The Northern Cheyenne Tribe of Montana, for example, fought many years to achieve a Class A air quality rating from the Environmental Protection Agency in order to regulate strip-mining and coal pollution on its reservation.

On the other hand, non-Indians have been involved in weakly regulated land-use practices for years; yet no one has questioned how wisely the land was being used. Such land-use practices are evident in examining the Atlantic and Pacific Ocean salmon. For thousands of years before non-Indians came on the scene, salmon ran abundantly in these waters. Today, Atlantic salmon of U.S. origin are nearly extinct. The salmon of the west coast are also severely depressed.



In the early 1900's, over 16 million fish were caught annually in Puget Sound waters alone. By mid-1960, that number had declined to 3.5 million. Indians had nothing to do with this decline, however. Polluted waters caused 63 major fish kills between 1952 and 1962 with no reforms from any of the polluters to control the pollution. Construction of Grand

Coulee Dam wiped out 1100 miles of spawning beds. Fragile spawning grounds were, and still are, easily destroyed by poor logging practices such as clearcutting timber near streams. Finally, non-Indian fisheries managers allowed over-fishing by commercial non-Indian fishermen.

What are the rights of non-Indians who live on reservations?

Indian governments traditionally have been, and continue to be today, respectful of the rights of non-Indians living on reservations. Although most Tribes desire self-determination, and that includes the responsibility to make and enforce laws within their territory, ordinary homeowners will continue to receive the respect and justice they have always gotten from Indian governments.

Almost all Indian governments have constitutions which contain provisions patterned after the United States Bill of Rights. Furthermore, federal law protects the civil rights of all persons on Indian land, including the due process, free speech and private property rights of non-Indians.

Those who seek to live in peace with the Natives have always received fair, even generous, treatment from Indian governments. There is no history of abuse of the rights of non-Indians on reservations. In fact, the reverse is true. Wealthy ranchers, land developers and strip miners seek to terminate Indian jurisdiction in order to acquire Indian land and resources at bargain prices to extract super-profits.

Indians have been called 'supercitizens'. Are they?

Well, only if supercitizenship entitles them to the lowest rate of education of all other U.S. citizens, the highest infant mortality rate and the lowest life expectancy rate. Until these inequities are corrected, Indians can hardly be called "supercitizens."

Indians did not ask to be U.S. citizens. But they now have the rights and responsibilities of U.S. citizenship. They also have the rights and responsibilities of tribal citizenship, however. Indians are subject to tribal laws and regulations which non-Indians are not. Although tribes have the right to govern themselves and see treaty promises fulfilled, every aspect of reservation economic activity is intensively regulated by the Bureau of Indian Affairs.

Most benefits received from the federal government were agreed upon at the time of treaty-signing or represent payment for land.

What rights do Indian tribes have to the energy resources on their reservations?

Treaties guaranteed that reservation lands were for the "exclusive use" of tribes. Tribes possess rights of any government to the resources on their lands, except where Congress has unilaterally restricted that authority. Some tribes will choose to develop energy resources, others will not. Whatever the choice, it is the tribes' legal right to determine the use of resources found on their land.

Where decisions are made <u>for</u> tribes rather than <u>by</u> them, there is the danger that Indian environmental and social concerns will be ignored. Often, in the past, the Bureau of Indian Affairs leased or sold tribal resources with little or no consultation with the tribes themselves. For example, the Navajo Tribe's resources provide electricity for five million homes, yet most homes on the reservation are without any electrical power.

Tribal governments and tribal members are the best judges of what should be the future of their lands. Any resource removal has an environmental price. Indians pay the price for the development of resources on their land. When tribes are able to control their resources, they can determine the price at which development is more beneficial than nondevelopment.

The Northern Cheyenne Tribe of Montana, among others, is renegotiating old leases negotiated in bad faith. The new leases will better reflect tribal values and minimize social impacts by stopping 75 percent of the reservation from being strip-mined.

Tribal control of natural resources found on reservations is also supported by Congressional legislation. The Indian Freedom of

Religion Act assures that resources found on reservations can be retained if found on or near religious holy lands. The Self-Determination Act of 1975 allows and encourages tribes to control their own affairs.

Why is it important that Indian nations have authority to levy taxes on reservations?

Treaties guaranteed that tribes would be self-governing on their own lands. Every government requires funds to provide needed services to its citizens; tribal governments are no exception. If tribes cannot raise the cost of local services by taxing people who use the reservation, the federal government has to pay for the services by taxing people who do not use the reservation; that is most everyone.

The "tax break" which tribes receive is common in the federal system as a whole. Every state and city boundary has tax differences -- not only excise taxes, but sales, income and property taxes as well. No one however, has gone to the extent of demanding equal taxation nationwide. States always have had to live with the fact that the cost of taxation may drive people elsewhere. Some states have very high income taxes, but they do not plan on going to court to keep their residents from moving away, thereby reducing their tax yield.

Reservation Indians in Washington state, for example, buy more than 95% of their goods and services from off-reservation non-Indian suppliers. This means that nearly all Indian spending is taxed by the state. Sales taxes supply that state with one-third of its total revenue. Property taxes give the state only 5% of its revenue. Local property taxes support services that most tribes provide independently, like police protection. There simply is no evidence that the state of Washington has suffered grievously from tribal tax exemptions.

Do tribes provide social services to Indian children?

Prior to the settlement of American pioneers, Indians practiced traditional child-rearing methods which maintained the extended family as part of a functional social system. There was no need for formal social services for children since such services were built in to the Indian social system. With the influx of non-Indian culture, however, standards were imposed on Indian families by non-Indians to raise their children the "right" way. No consideration was given to traditional Indian ways that adequately maintained a social order for centuries.

As tribal responsibility for minor members was increasingly usurped by state agencies, many Indian families were broken up because they did not meet non-Indian standards. In many instances, children raised by grandparents, according to Indian customs, may have been taken away from their native setting and placed in a non-Indian home for foster care or adoption. Children removed

from their natural, native parents frequently lose their cultural ties.

Often, Indian children raised in non-Indian homes have difficulty adjusting upon reaching adulthood. For example, some studies show that many Indians in prison or involved in prostitution today were raised primarily in non-Indian homes. Tribes believe that keeping Indian children in Indian homes will reduce such problems. Many Indians believe that the continued placement of Indians into non-Indian homes is a form of cultural genocide. Tribes are, and always have been, anxious to provide support services to their members.

Recent concerted action by tribes resulted in the passage of the Indian Child Welfare Act of 1978. This Act returns to the tribes greater control over their children's lives. The Indian Child Welfare Act requires state agencies to notify tribes when minor members come into state agencies. Also, the state must seek Indian foster care whenever possible. A direct benefit of the Act has been the increased number of licensed Indian foster homes on reservations.

Why are tribes making so many land claims now? Is the United States getting soft on Indians?

The United States made treaty promises to protect the holdings retained by the tribes. When states or individuals violate Indian property rights, the U.S. is legally and morally bound to protect Indian rights. Despite the enormous amounts of lands deeded to the U.S. by treaty, Indians have consistently faced illegal seizure of the lands they retained. To flourish as a people, the tribes need the land base which the treaties guaranteed them.

As tribal strength increases the desire and capability of the tribes to assert their legal right increases also. Many tribes have spent years trying to get back lands illegally taken from them. Only when no other option is open to them do they take their claims to court. Hence, there is not an increase in land claims because the United States is getting soft on the tribes, but because the tribes are getting strong.

NOTE TO THE READER

It should be kept in mind that Indian people have a bicultural experience. The United States had more physical power than the Indian Nations -- non-Indians are the dominant society. Because of this, Indian tribes have been forced to bring their problems to non-Indian courts. Often the results have been extremely disadvantageous to tribes. However, when a court does uphold a tribal right, it should be remembered that the court is operating under U.S. rules, U.S. law, and in the light of U.S. justice. It is, therefore, ironic that the affirmation of Indian rights is viewed by some non-Indians as "unfair."

Tribes would rather not have to go to court to protect their rights, but sometimes there is no other way to protect them. Most people want to stay out of court but need its protection for basic property and human rights.

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Cartoon by Medicine Story

Photos: Kim Steele
Steve Johnson
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Design: Judi Gladstone

SO WHAT CAN I DO?

The National Coalition to Support Indian Treaties represents the voices of people organized to insist that our government keep the promises it made over the last 200 years to Indian peoples and nations.

There's plenty to do: Hold an informal "coffee hour" in your home. Invite friends, neighbors, members of your own organization or church group. NCSIT will provide the speakers and materials. Canvas (doorbelling) a legislative district, write letters, set up outreach tables, do fundraising activities, work with the media or help with office work.

All you have to do is pick up the phone or send in the form below and begin.

Call (206) 632-6496 or return this slip to:
National Coalition to Support Indian Treaties
814 NE 41st St. • Seattle, WA 98105

Yes, I'm interested. Please send more information on _____

_____

☐ Yes, I have time to volunteer.

☐ Yes, I would like to be part of the Legislative Response Network.

☐ Yes, I need a speaker for my _____
(school, church, club, home).

☐ Yes, I want to join:

$10 seniors, students, unemployed	$50 contributing
$15 individual	$100 sustaining
$25 family	_____ other

My name _____

Address _____

_____ Phone _____

"Great nations, like great men, keep their word."

— Justice Hugo Black commenting on Indian treaties.

If the rights of Native Americans are not respected, the honor of the United States, and its avowed principles of freedom, due process, and self-determination will suffer severely in the eyes of the world community. Only in Indian America are the functions of the schools, police, hospitals, public works, social services, real estate and even private businesses controlled by the federal government and civil service employees. Our leaders speak to no avail when they espouse human rights on foreign soils while here at home the rights of Native Americans continue to be threatened and ignored.

Drawing by Pat Lucas